



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/170139

PRELIMINARY RECITALS

Pursuant to a petition filed November 13, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 03, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's prior authorization request for Speech Language Therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Laura Triller, MA, CCC, SLP
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Waukesha County. The petitioner is a twelve year with diagnoses of Attention Deficit Hyperactivity Disorder, Anxiety Disorder and Autism Spectrum Disorder associated with a genetic condition. As a result, the petitioner suffers from severe speech apraxia.
2. On July 23, 2015 the petitioner's provider submitted a prior authorization request for speech language therapy. The request was for services one time per week for 26 weeks. The total cost was \$2,340.00. The Department returned this request to the provider for additional clinical information. On August 20, 2015 the provider resubmitted the prior authorization request. The requested services were identical. The Department returned this second request for the petitioner's individualized educational plan (IEP). On October 1, 2015 the provider resubmitted an identical request with the petitioner's IEP.
3. The petitioner receives speech language therapy services at school. Through his IEP he receives 15 minutes of speech language therapy services two times per week. The school lists the following therapy goals:
 - a. Given visual supports, rehearsed routines and appropriate communication tool including signs, pointing, and communication devices, [the petitioner] will demonstrate increased language skills by achieving 2 of 3 benchmarks listed below at 70% accuracy in 3 out of 5 opportunities.
 - b. Will answer an open-ended question about an event, story, or situation.
 - c. Will indicate choice of activity given 2 visual options.
 - d. Will engage in a reciprocal scripted conversational interaction consisting of at least 2 exchanges.
4. The petitioner's provider lists the following therapy goals:
 - a. Will follow 2-step commands with minimal cues in 80% of opportunities.
 - b. Will greet speech language therapy at the beginning of the session independently by saying "hi how are you?" with eye contact.
 - c. Will respond to wh-questions (who, what, where, and when) using iPad in 80% of opportunities or verbalize "I don't understand."
 - d. Will ask speech language therapy a question two times during treatment session with less than 2 cues.
 - e. Will respond to "how are you?" with less than 2 cues.
 - f. Will use appropriate sentence structure to describe a picture in 4/5 opportunities (N+V).
5. The petitioner has the following history of speech language therapy requests, approvals/denials, and appeals:
 - a. 6/1/09 – 8/31/09 – 12 SLT sessions requested and approved.
 - b. 9/7/10 – 3/8/11 – 26 SLT sessions requested and approved.
 - c. 9/26/2010 – 26 SLT sessions requested, denied, but overturned on appeal with all 26 sessions approved.
 - d. 4/6/11 – 26 SLT sessions requested and denied.
 - e. 10/25/13 – 24 SLT sessions requested and denied. The denial was appealed, and DHA upheld the denial.

- f. 6/1/14 – 52 SLT sessions requested, and eventually approved through the appeal process, but short of a hearing.
 - g. 2/1/15 – 8/2/15 – 52 SLT sessions requested and approved.
 - h. This request 26 SLT requested, 4 approved (pending the outcome of this decision).
6. On October 15, 2015 the Department sent the petitioner a notice stating that they had approved 4 of the 26 requested speech language therapy sessions.
 7. On November 16, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the Bureau employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. Included in the definition of “medically necessary” at §DHS 101.03(96m) are the requirements that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. When speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.03. It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6.

Prior hearing decisions have held consistently that where speech therapy is provided in school, it would not be cost effective for MA to cover private therapy. If the private therapy covers a situation that school therapy does not address, it has been found that the services are not duplicative. See, for example, Decision no. MPA-48/16180, dated August 21, 1997, where the evidence showed that the petitioner had a unique oral deficiency that the school therapist was not trained to address. Also see no. MPA-51/41838 (11-18-99), where the school therapist was working on building vocabulary while the private therapist was working on the physical process of vocalizing sounds.

The Department has long held the position that school therapy and private therapy basically address the same deficits and use the same techniques. Thus for private therapy to be approved when school services are in place, there must be some deficit or deficits that the school therapist cannot address. The Department has refused to accept that the difference between school and private therapy can be that the school therapy addresses school concerns while the private therapy addresses home concerns. See Final Decision no. MPA-37/80183, dated February 16, 2007.

I have reviewed the materials provided thoroughly. Two factors stand out to me. First, the goals of the school therapy and private therapy are very similar, and perhaps identical. Both therapists are working on the petitioner's language response to open-ended questions. Open-ended questions are more specifically wh-questions including who, what, where, and when. They are both working on the petitioner's ability to express himself by asking a question. Implicit in this goal is the ability to use appropriate sentence structure. It appears that the private therapy listed the goals in more specific detail, however, both therapists are working on identical issues with this petitioner.

The second factor that stands out to me is that there appears to be no coordination between the school and private therapists. There does not appear to be a unified plan of care. I note that the petitioner has been receiving private therapy. Most recently 52 sessions were requested and approved. It follows that four

sessions are necessary to transition to only school-based speech language therapy. That said this does not appear to be a coordinated effort. Nonetheless, the Department approved four of the requested 26 sessions.

The petitioner's mother testified that there has been an issue with the programs available on the petitioner's i-pad. These programs are used for the petitioner's speech therapy. This has been an issue when the petitioner transitioned to the middle school. The i-pad issue does not change the stated goals of the school-based speech therapy. Although I understand the petitioner's mother's frustration, this does not provide a basis to approve private speech language therapy.

I further note that I reviewed the new IEP that the petitioner's mother submitted. This IEP had the exact same speech language treatment goals listed in the previous IEP. For all of these reasons, I am going to affirm the modification of the speech/language therapy PA request.

I suggest that the provider can always file a new prior authorization request. Such a request should contain therapy goals distinct from the listed therapy goals in the petitioner's IEP and show coordination with the school therapist. For a successful request there needs to be a better explanation of why the private therapy is needed along with the school therapy.

CONCLUSIONS OF LAW

The Department correctly modified the petitioner's prior authorization request for Speech Language Therapy.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of January, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 25, 2016.

Division of Health Care Access and Accountability